

Eugenics Legislation: Act of 1907

CHAPTER 215.

AN ACT entitled an act to prevent procreation of confirmed criminals, idiots, imbeciles and rapists; providing that superintendents and boards of managers of institutions where such persons are confined shall have the authority and are empowered to appoint a committee of experts, consisting of two (2) physicians, to examine into the mental condition of such inmates.

[H. 384. Approved March 9, 1907.]

Preamble.

Whereas, Heredity plays a most important part in the transmission of crime, idiocy and imbecility;

Penal Institutions—Surgical Operations.

Therefore, *Be it enacted by the general assembly of the State of Indiana*, That on and after the passage of this act it shall be compulsory for each and every institution in the state, entrusted with the care of confirmed criminals, idiots, rapists and imbeciles, to appoint upon its staff, in addition to the regular institutional physician, two (2) skilled surgeons of recognized ability, whose duty it shall be, in conjunction with the chief physician of the institution, to examine the mental and physical condition of such inmates as are recommended by the institutional physician and board of managers. If, in the judgment of this committee of experts and the board of managers, procreation is inadvisable and there is no probability of improvement of the mental condition of the inmate, it shall be lawful for the surgeons to perform such operation for the prevention of procreation as shall be decided safest and most effective. But this operation shall not be performed except in cases that have been pronounced unimprovable: *Provided*, That in no case shall the consultation fee be more than three (\$3.00) dollars to each expert, to be paid out of the funds appropriated for the maintenance of such institution.

Eugenics Legislation: Act of 1927

CHAPTER 241.

AN ACT to provide for the sexual sterilization of inmates of state institutions in certain cases.

[S. 188. Approved March 11, 1927.]

Sexual Sterilization of Inmates of State Institutions in Certain Cases—Authorization.

SECTION 1. *Be it enacted by the general assembly of the State of Indiana,* That whenever the superintendent of any hospital or other institution of this state, or of any county in this state, which has the care or custody of insane, feeble-minded or epileptic persons, shall be of the opinion that it is for the best interests of the patient and of society that any inmate of the institution under his care should be sexually sterilized, such superintendent, if a lawfully licensed surgeon, is hereby authorized to perform, or cause to be performed by some capable physician or surgeon, an operation or treatment of sterilization on any such patient confined in such institution afflicted with hereditary forms of insanity that are recurrent, idiocy, imbecility, feeble-mindedness or epilepsy: *Provided,* That such superintendent shall have first complied with the requirements of this act.

Petition by Superintendent to Governing Board—Notice, Hearing, Order.

Sec. 2. Such superintendent shall first present to the governing board of such institution a petition stating the facts of the case and the grounds of his opinion, verified by his affidavit to the best of his knowledge and belief, and praying that an order may be entered by said board requiring him to perform or to have performed by some competent physician to be designated by him in his said petition or by said board in its order, upon the inmate of his institution named in such petition, the operation of

vasectomy if upon a male and of salpingectomy if upon a female; or any other more suitable operation or treatment having sure sterilizing results.

A copy of said petition shall be served upon the inmate together with a notice in writing designating the time and place in the said institution or elsewhere, not less than thirty days before the presentation of such petition to said board, when and where said board may hear and act upon such petition. Such inmate shall be produced before such board of such hearing.

A copy of the said petition and notice shall also be so served upon the legal guardian or next of kin of the said inmate, if such guardian or next of kin be known to the said superintendent, and if there be no such guardian or next of kin or if none such be known to the said superintendent, then the said superintendent shall apply to the circuit court of the county in which his said institution is situated, or to the judge thereof in vacation, who by a proper order entered in the order book of the said court shall appoint some suitable person to act as guardian ad litem of the said inmate during and for the purposes of proceedings under this act, to defend the rights and interests of the said inmate, and the guardian ad litem so appointed shall be paid by the said institution a fee of not exceeding twenty-five dollars as may be determined by the judge of the said court for his services under said appointment, and such guardian ad litem shall be served likewise with a copy of the aforesaid petition and notice. Such guardian may be removed or discharged at any time by the said court or the judge thereof in vacation and a new guardian appointed and substituted in his place.

If the said inmate be an infant having a living parent or parents whose names and addresses are known to the said superintendent, they or either of them as the case may be shall be served likewise with a copy of the said petition and notice.

After the notice required by this act shall have been so given, the said board at the time and place named therein, with such reasonable continuances from time to time and from place to place as the said board may determine, shall proceed to hear and consider the said petition

and the evidence offered in support of and against the same: *Provided*, That the said special board shall see to it that the said inmate shall have opportunity and leave to attend the said hearings in person if desired by him or if requested by his guardian or parent or next of kin served with the notice and petition aforesaid.

The said board may receive and consider as evidence at the said hearing the commitment papers and other records of the said inmate with or in any institution as certified by the superintendent or superintendents thereof, together with such other legal evidence as may be offered by any party to the proceedings.

Any member of the said board shall have power to administer oaths to any witnesses at such hearing.

Depositions may be taken by any party after due notice and read in evidence if relevant.

The said board shall preserve and keep all record evidence offered at such hearings and shall have reduced to writing in duplicate all oral evidence so heard, to be kept with its records.

Any party to the said proceedings shall have the right to be represented by counsel at such hearings.

The said board may deny the prayer of the said petition or if the said board shall find that the said inmate is insane, idiotic, imbecile, feeble-minded or epileptic, and by the laws of heredity is the probable potential parent of socially inadequate offspring likewise afflicted, that the said inmate may be sexually sterilized without detriment to his or her general health, and that the welfare of the inmate and of society will be promoted by such sterilization, the said board may order the said superintendent to perform or to have performed by some competent physician to be named in such order upon the said inmate, after not less than thirty days from the date of such order, the operation of vasectomy if a male or of salpingectomy if a female, or any other more suitable operation or treatment having sure sterilizing results: *Provided*, That nothing in this act shall be construed to authorize the operation of castration nor the removal of sound organs from the body.

Appeal to Circuit Court—Stay of Proceedings.

SEC. 3. From any order so entered by the said board the said superintendent or the said inmate or his guardian or parent or next friend shall within thirty days after the date of such order have an appeal as of right to the circuit court of the county in which the said institution is situated, which appeal may be taken by giving notice thereof in writing to any member of the said board and to the other parties to the said proceeding, whereupon the said superintendent shall forthwith cause a copy of the petition, notice, evidence and orders of the said board certified by the chairman or in his absence by any member thereof, to the clerk of the said circuit court, who shall file the same and docket the appeal to be heard and determined by the said court as soon thereafter as may be practicable.

The said circuit court in determining such appeal may consider the record of the proceedings before the said board, including the evidence therein appearing, together with such other legal evidence as the said court may consider pertinent and proper that may be offered to the said court by any party to the appeal.

Upon such appeal the said circuit court may affirm, revise or reverse the orders of the said board appealed from and may enter such order as it deems just and right and which it shall certify to the said board.

The pendency of such appeal shall stay proceedings under the order of the board until the appeal be determined.

Appeal from Circuit Court to Supreme Court.

SEC. 4. Any party to such appeal in the circuit court may within thirty days after the date of the final order therein, apply for an appeal to the supreme court, which supreme court may grant or refuse such appeal and shall have jurisdiction to hear and determine the same upon the record of trial in the circuit court and to order the circuit court to make in the matter such order as may to the supreme court seem proper. The pendency of an appeal in the supreme court shall operate as a stay of proceedings under any orders of the board or of the circuit court until the appeal be determined by the supreme court.

Liability of Persons Participating in Execution of Act's Provisions.

SEC. 5. Neither any of said superintendents nor any other person legally participating in the execution of the provisions of this act shall be liable either civilly or criminally on account of such participation but they shall not be exempt from such action for any illegal or criminal act which may be incidental or collateral to such participation.

Medical or Surgical Treatment, Effect of Act Upon.

SEC. 6. Nothing in this act shall be construed so as to prevent the medical or surgical treatment for sound therapeutic reasons of any person in this state, by a physician or surgeon licensed by this state, which treatment may incidentally involve the nullification or destruction of the reproductive functions: *Provided*, That such treatment shall be that which is recognized as legal and approved after due process of law.

CHAPTER 242.

AN ACT discharging, releasing and absolving from all liability all persons, their estates and heirs at law, who were accepted, obligated and liable as freehold sureties on the bonds of county treasurers, in certain counties, between January 1, 1921, and December 31, 1924, and declaring an emergency.

[S. 123. Approved March 11, 1927.]

Freehold Sureties on Bonds of County Treasurers in Certain Cases—Discharge of Liability.

SECTION 1. *Be it enacted by the general assembly of the State of Indiana*, That any and all persons and the estates and heirs at law of any and all persons who were accepted, obligated and liable as freehold sureties on the bond or bonds of any county treasurer of any county having a population of not less than 18,800 and not more than 19,200, according to the last preceding United States census, at any time between the first day of January, 1921, and the thirty-first day of December, 1924, are hereby discharged, released and absolved from any and all liability on or on account of such bond or bonds.

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ACTS OF INDIANA GENERAL ASSEMBLY, 1931

CHAPTER 50.

AN ACT providing for the sexual sterilization of feeble minded persons in certain cases, prescribing the power of courts and defining the duties of medical examiners and the superintendent of institutions for the feeble minded in relation thereto.

[H. 220. Approved March 3, 1931.]

Feeble Minded Persons—Commitments—Duty of Examining Physicians—Contents of Certificates.

SECTION 1. *Be it enacted by the general assembly of the State of Indiana*, That whenever an application for the commitment of any person to an institution for the feeble-minded shall be filed in any court having competent jurisdiction, it shall be the duty of each of the examining physicians appointed by the court, as now provided by law, if he shall certify to the court that the person for whom such application is made, is, in his opinion, afflicted with idiocy, imbecility, or feeble-mindedness, to further certify to the court whether, in his opinion, such person is the probable potential parent of mentally incompetent or socially inadequate offspring likewise afflicted.

Sexual Sterilization—Evidence—Finding and Decree of Court—Appeal—Commitment—Contents.

SEC. 2. Upon the hearing of such application for commitment, evidence may be submitted as to whether the best interest of society and of such feeble-minded person will be served by his or her sexual sterilization; and if the court shall find that such person is feeble-minded and should be committed to the custody of such institution for the feeble-minded, it shall further find whether the welfare of society and of such feeble-minded person will be promoted by his or her sexual sterilization, the finding of the court being either that sexual sterilization is unnecessary or that the best interest of society and of such feeble-minded person will be served by his or her sexual sterilization. And if the court shall find that the best interests of society and of such feeble-minded person will be served by his or her sexual sterilization, the court, as a part of the judgment and decree committing such feeble-minded person to such institution shall authorize the superintendent of the institution to which such feeble-minded person is committed to have per-

formed upon such feeble-minded person the operation of vasectomy, if a male, and of salpingectomy, if a female, or any other more suitable operation or treatment having sure sterilizing results, which authorization shall be set forth in the order of commitment, a copy of which, under seal of the court, shall be forwarded to such superintendent along with other required papers in the case: *Provided, however,* That such feeble-minded person, by his or her guardian, parent or next friend, may, within thirty days after judgment, appeal, as in other civil proceedings, from the finding and judgment of the court authorizing such operation of sterilization, and the pendency of such appeal shall stay the performance of such operation of sterilization until the appeal be determined: *Provided, further,* That upon the filing of notice of appeal, the clerk of the court in which such notice is filed shall forthwith forward by mail to the superintendent of such institution written information of the filing of such notice of appeal.

**Sexual Sterilization — Duties of Superintendent —
Physical Condition of Patient—Operation.**

SEC. 3. Whenever any feeble-minded person upon whom the operation of sexual sterilization shall have been authorized, as herein provided, shall have been admitted to an institution for the feeble-minded, the superintendent thereof, at such time as he may deem expedient, and when in his judgment the general health of such feeble-minded person will not be affected thereby, and not less than thirty days after such feeble-minded person has been received at such institution, may have performed upon such feeble-minded person by a competent licensed physician and surgeon the operation of vasectomy, if a male, and salpingectomy, if a female, or any other more suitable operation or treatment having such sterilizing results: *Provided,* That nothing in this act shall be construed to authorize the operation of castration or the removal of sound organs from the body.

**Operation—Report by Superintendent—Contents—
Board of State Charities.**

SEC. 4. It shall be the duty of the superintendent of such institution for feeble-minded, whenever an operation for the sexual sterilization of a feeble-minded person shall have

been performed, under the provisions of this act, and within ten days thereafter, to make a report thereof to the secretary of the board of state charities, which report shall set forth the name and age of the person upon whom such operation was performed, the county from which such person was committed, the date of such commitment, the date of admission to the institution, the date of such operation and the name and address of the physician and surgeon performing the same.

Superintendent—Physicians and Surgeons—Liability.

SEC. 5. Neither the superintendent, the attending physician or surgeon, nor any other person legally participating in the execution of the provisions of this act shall be liable either civilly or criminally on account of such participation, but they shall not be exempt from such action for any illegal or criminal act which may be incidental or collateral thereto.

Construction of Act.

SEC. 6. The provisions of this act shall not be construed as conflicting with or superseding the provision of the act approved March 11, 1927, entitled "An act to provide for the sexual sterilization of inmates of state institutions in certain cases" which act shall remain in full force and effect, but are intended as a separate and additional method of procedure.

CHAPTER 51.

AN ACT to amend sections 2, 3, 4, 6 and 7 of an act entitled "An act entitled an act prescribing the number of trustees of the Indiana University and the manner of their election, and declaring an emergency," approved March 3, 1891.

[H. 332. Approved March 3, 1931.]

Indiana University—Board of Trustees—Election.

SECTION 1. *Be it enacted by the general assembly of the State of Indiana,* That section 2 of the above entitled act be amended to read as follows: Section 2. Three members of the board of trustees shall be elected by the alumni of the university in the manner hereinafter provided. At the

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16-13-13-1

held by a regular employee. [IC 1971, 16-13-12.8-9, as added by Acts 1972, P. L. 3, § 1, p. 10.]

16-13-12.8-10 [22-1324]. Appropriation.—There is hereby appropriated annually from the state general fund the sum of fifty thousand dollars [\$50,000] to accomplish all of the purposes of this chapter [16-13-12.8-1—16-13-12.8-10]. The maximum annual expenditure may not exceed this specific appropriation. [IC 1971, 16-13-12.8-10, as added by Acts 1972, P. L. 3, § 1, p. 10.]

Repeal. Section 2 of Acts 1972, P. L. 3 repealed Acts 1969, ch. 487, as amended.

Separability. Section 3 of Acts 1972, P. L. 3, reads: "The operation and effect of the parts of law repealed and reenacted by this amendatory act are in-

tended to continue in operation, without interruption, regardless of the fact of simultaneous repeal and reenactment."

Emergency. Section 4 of Acts 1972, P. L. 3 declared an emergency. Approved January 21, 1972.

CHAPTER 13

STERILIZATION OF PATIENTS [—ACT OF 1927]

SECTION.

16-13-13-1. Authorization.

16-13-13-2. Petition by superintendent to governing board—Notice—Hearing—Order.

16-13-13-3. Appeal to circuit court — Stay of proceedings.

SECTION.

16-13-13-4. Appeal from circuit court to Supreme Court — Act of 1927.

16-13-13-5. Liability of persons executing.

16-13-13-6. Medical or surgical treatment.

16-13-13-1 [22-1601]. Authorization.—Whenever the superintendent of any hospital or other institution of this state, or of any county in this state, which has the care or custody of insane, feeble-minded or epileptic persons, shall be of the opinion that it is for the best interests of the patient and of society that any inmate of the institution under his care should be sexually sterilized, such superintendent, if a lawfully licensed physician and surgeon, is hereby authorized to perform, or cause to be performed by some capable physician or surgeon, an operation or treatment of sterilization on any such patient confined in such institution afflicted with hereditary forms of insanity that are recurrent, epilepsy, or incurable primary or secondary types of feeble-mindedness: Provided, That such superintendent shall have first complied with the requirements of this act [16-13-13-1—16-13-13-6]. [Acts 1927, ch. 241, § 1, p. 713; 1937, ch. 244, § 1, p. 1164.]

Title of Act. The title of Acts 1927, ch. 241, reads: "An act to provide for the sexual sterilization of inmates of state institutions in certain cases." In force May 16, 1927.

Amendment. The 1937 amendment added the words "physician and" between the words "surgeon" and "licensed"; deleted "idiocy, imbecility" following "forms of insanity that are recurrent" and substituted "epilepsy, or incurable primary or secondary types of feeble-mindedness" for "feeble-mindedness or epilepsy."

Cross-References. Fort Wayne State Hospital and Treatment Center, 16-15-5-1—16-15-8-1.

Hospitals for the insane, see compiler's note to 16-14-1-1.

Muscatatuck State Hospital and Training Center, 16-15-4-1—16-15-4-13.

New Castle State Hospital, 16-14-21-1—16-14-21-17.

Indiana Law Journal. Vasectomy, 2 Ind. L. J. 259.

Indiana Sexual Psychopath Statute, 25 Ind. L. J. 186.

Eugenic Sterilization in Indiana, 38 Ind. L. J. 275.

Comparative Legislation. Sterilization laws:

Ariz. Rev. Stat., §§ 36-531—36-540.
 Cal. Deering's Codes, Welfare and Institutions Code, § 7254.
 Conn. Gen. Stat. 1958, §§ 17-19.

Del. Code Ann., tit. 16, §§ 5701-5705.
 Ga. Code Ann., §§ 84-931—84-936.
 Iowa. Code 1966, §§ 145.1-145.22.
 Vt. Stat. Ann., tit. 18, §§ 8701-8704.
 W. Va. Code, §§ 16-10-1—16-10-7.
 Wis. Stat. 1971, § 46.12.

DECISIONS UNDER PRIOR LAW**Former Law Unconstitutional.**

Acts 1907, ch. 215, p. 377, which authorized the performance of an operation on prisoners of certain classes to

prevent procreation, was unconstitutional. *Williams v. Smith* (1921), 190 Ind. 526, 131 N. E. 2.

Collateral References

Unauthorized sexual sterilization. 56 A. L. R. (2d) 695.

16-13-13-2 [22-1602]. **Petition by superintendent to governing board—Notice—Hearing—Order.**—Such superintendent shall first present to the governing board of such institution a petition stating the facts of the case and the grounds of his opinion, verified by his affidavit to the best of his knowledge and belief, and praying that an order may be entered by said board requiring him to perform or to have performed by some competent physician to be designated by him in his said petition or by said board in its order, upon the inmate of his institution named in such petition, the operation of vasectomy if upon a male and of salpingectomy if upon a female; or any other more suitable operation or treatment having sure sterilizing results.

A copy of said petition shall be served upon the inmate together with a notice in writing designating the time and place in said institution or elsewhere, not less than thirty [30] days before the presentation of such petition to said board, when and where said board may hear and act upon such petition. Such inmate shall be produced before such board of [at] such hearing.

A copy of the said petition and notice shall also be so served upon the legal guardian or next of kin of the said inmate, if such guardian or next of kin be known to the said superintendent, and if there be no such guardian or next of kin or if none such be known to the said superintendent, then the said superintendent shall apply to the circuit court of the county in which his said institution is situated, or to the judge thereof in vacation, who by a proper order entered in the order book of the said court shall appoint some suitable person to act as guardian ad litem of the said inmate during and for the purposes of proceedings under this act [16-13-13-1—16-13-13-6], to defend the rights and interests of the said inmate, and the guardian ad litem so appointed shall be paid by the said institution a fee of not exceeding twenty-five dollars [\$25.00] as may be determined by the judge of the said court for his services under said appointment, and such guardian ad litem shall be served likewise with a copy of the aforesaid petition and notice. Such guardian may be removed or discharged at any time by the said court or by the judge thereof in vacation and a new guardian appointed and substituted in his place.

If the said inmate be an infant having a living parent or parents whose names and addresses are known to the said superintendent, they or

either of them as the case may be shall be served likewise with a copy of the said petition and notice.

After the notice required by this act shall have been so given, the said board at the time and place named therein, with such reasonable continuances from time to time and from place to place as the said board may determine, shall proceed to hear and consider the said petition and the evidence offered in support of and against the same: Provided, That the said special board shall see to it that the said inmate shall have opportunity and leave to attend the said hearings in person if desired by him or if requested by his guardian or parent or next of kin served with the notice and petition aforesaid.

The said board may receive and consider as evidence at the said hearing the commitment papers and other records of the said inmate with or in any institution as certified by the superintendent or superintendents thereof, together with such other legal evidence as may be offered by any party to the proceedings.

Any member of the said board shall have power to administer oaths to any witnesses at such hearing.

Depositions may be taken by any party after due notice and read in evidence if relevant.

The said board shall preserve and keep all record evidence offered at such hearings and shall have reduced to writing in duplicate all oral evidence so heard, to be kept with its records.

Any party to the said proceedings shall have the right to be represented by counsel at such hearings, and to cross-examine all witnesses produced by and who testify at the instance of the opposite party.

The said board may deny the prayer of the said petition, or if the said board shall find that said inmate is afflicted with hereditary forms of insanity that are recurrent, epilepsy, or incurable primary or secondary types of feeble-mindedness, that the said inmate may be sexually sterilized without detriment to his or her general health, and that the welfare of the inmate and of society will be promoted by such sterilization, in either case, the said board shall report its finding to the Indiana council for mental health [commissioner of mental health] for review and approval and with its finding shall transmit all the papers and records pertaining thereto or a certified transcript of the same, and said papers and records are to be carefully examined by said Indiana council for mental health [commissioner of mental health] and after being so examined the said council [commissioner of mental health] may approve or reverse the action of said board within thirty [30] days and may deny the prayer of said petition or, may order the said superintendent to perform or to have performed by some competent physician or surgeon to be named in such order upon the said inmate, after not less than fifteen [15] days from the date of such order, the operation of vasectomy if a male or of salpingectomy if a female, or any other more suitable operation or treatment having sure sterilizing results: Provided, That nothing in this act shall be construed to authorize the operation of castration or the removal of disease-free organs from the body. [Acts 1927, ch. 241, § 2, p. 713; 1937, ch. 244, § 2, p. 1164; 1951, ch. 227, § 1, p. 649.]

Compiler's Notes. The governing boards of institutions as mentioned in this section were abolished by § 207 of Acts

1953, ch. 197. Section 205 of the same act provided that the powers and duties of boards of such institutions were trans-

ferred and conferred upon the commissioner of the division of mental health of the department of health. Section 9 of Acts 1961, ch. 58 (16-13-1-9) thereafter provided that such powers and duties were transferred and conferred upon the commissioner of mental health of the department of mental health.

The bracketed words "commissioner of mental health" in the last paragraph were inserted by the compiler. The Indiana council for mental health was abolished by Acts 1953, ch. 197, § 204 and its powers and duties transferred to the commissioner of the division of mental health of the department of health. The division of mental health of the department of health was abolished by 16-13-1-2 and the powers and duties transferred to the commissioner of mental health of the department of mental health by 16-13-1-7.

The bracketed word "at" in the second paragraph was inserted by the compiler.

Amendments. As originally enacted the final two paragraphs of this section read:

"Any party to the said proceedings shall have the right to be represented by counsel at such hearings.

"The said board may deny the prayer of the said petition or if the said board shall find that the said inmate is insane,

idiotic, imbecile, feeble-minded or epileptic, and by the laws of heredity is the probable potential parent of socially inadequate offspring likewise afflicted, that the said inmate may be sexually sterilized without detriment to his or her general health, and that the welfare of the inmate and of society will be promoted by such sterilization, the said board may order the said superintendent to perform or to have performed by some competent physician to be named in such order upon the said inmate, after not less than thirty days from the date of such order, the operation of vasectomy if a male or of salpingectomy if a female, or any other more suitable operation or treatment having sure sterilizing results: Provided, That nothing in this act shall be construed to authorize the operation of castration nor the removal of sound organs from the body."

The 1937 amendment added the portion of the next to the last paragraph following "at such hearings," and changed the last paragraph to its present form except for the change made by the 1951 amendment.

The 1951 amendment substituted "Indiana council for mental health" for "state department of public welfare" in the last paragraph.

16-13-13-3 [22-1603]. Appeal to circuit court—Stay of proceedings.—From any order so entered by the Indiana council for mental health [commissioner of mental health] the said inmate or his guardian or parent or next friend shall, within thirty [30] days after the date of such order, have an appeal as of right to the circuit court of the county in which said institution is situated, which appeal may be taken by giving notice thereof in writing to the said council [commissioner of mental health] and to the other parties to the said proceeding, whereupon the secretary of said council [commissioner of mental health] shall forthwith cause a copy of the petition, notice, evidence and orders of the said council [commissioner of mental health] certified by the secretary or, in his absence, by any member thereof to the clerk of the said circuit court, who shall file the same and docket the appeal to be heard and determined by the said court as soon thereafter as may be practicable.

The said circuit court, in determining such appeal, may consider the record of the proceedings before the said Indiana council for mental health [commissioner of mental health], including the evidence therein appearing, together with such other legal evidence as the said court may consider pertinent and proper that may be offered to the said court by any party to the appeal.

Upon such appeal the said circuit court may affirm, revise or reverse the orders of the said council [commissioner of mental health] appealed from and may enter such order as it deems just and right and which it shall certify to the said council [commissioner of mental health].

The pendency of such appeal shall stay proceedings under the order of the council [commissioner of mental health] until the appeal be determined. [Acts 1927, ch. 241, § 3, p. 713; 1951, ch. 227, § 2, p. 649.]

Compiler's Notes. The bracketed words "commissioner of mental health" were inserted by compiler. See compiler's note to 16-13-13-2.

Section 3 of Acts 1937, ch. 244 (§§ 1 and 2 of which amend 16-13-13-1, 16-13-13-2) compiled as 16-13-16-1 originally superseded this section, however this section would now seem to govern since amended in 1951.

Amendment. The 1951 amendment deleted the words "the superintendent or" preceding "the said inmate" near the

beginning of the first paragraph; substituted "Indiana council for mental health" or "council" wherever appearing for "board"; substituted "the said council" for "any member of said board" following "notice thereof in writing to" and substituted "the secretary of the said council" for "said superintendent" preceding "shall forthwith cause a copy of the petition."

Emergency. Section 3 of Acts 1951, ch. 227 declared an emergency. Approved March 5, 1951.

16-13-13-4 [22-1604]. Appeal from circuit court to Supreme Court—Act of 1927.—Any party to such appeal in the circuit court may within thirty [30] days after the date of the final order therein, apply for an appeal to the Supreme Court, which Supreme Court may grant or refuse such appeal and shall have jurisdiction to hear and determine the same upon the record of trial in the circuit court and to order the circuit court to make in the matter such order as may to the Supreme Court seem proper. The pendency of an appeal in the Supreme Court shall operate as a stay of proceedings under any orders of the board or of the circuit court until the appeal be determined by the Supreme Court. [Acts 1927, ch. 241, § 4, p. 713.]

Compiler's Note. The Court of Appeals may have jurisdiction of an appeal under this section. See Appellate Rule 4.

16-13-13-5 [22-1605]. Liability of persons executing.—Neither any of said superintendents nor any other person legally participating in the execution of the provisions of this act [16-13-13-1—16-13-13-6] shall be liable either civilly or criminally on account of such participation but they shall not be exempt from such action for any illegal or criminal act which may be incidental or collateral to such participation. [Acts 1927, ch. 241, § 5, p. 713.]

16-13-13-6 [22-1606]. Medical or surgical treatment.—Nothing in this act [16-13-13-1—16-13-13-6] shall be construed so as to prevent the medical or surgical treatment for sound therapeutic reasons of any person in this state, by a physician or surgeon licensed by this state, which treatment may incidentally involve the nullification or destruction of the reproductive functions: Provided, That such treatment shall be that which is recognized as legal and approved after due process of law. [Acts 1927, ch. 241, § 6, p. 713.]

CHAPTER 14

STERILIZATION OF PATIENTS [—ACT OF 1931]

SECTION.

16-13-14-1. Sterilization of feeble-minded persons — Hearing—Evidence — Finding and decree of court — Appeal — Commitment.

SECTION.

16-13-14-2. Duties of superintendent — Physical condition of patient—Operation.
16-13-14-3. Report by superintendent—Contents.

SECTION.

16-13-14-4. Liability of persons executing.

SECTION.

16-13-14-5. Act of 1931 supplemental.

16-13-14-1 [22-1608]. Sterilization of feeble-minded persons—Hearing—Evidence—Finding and decree of court—Appeal—Commitment.—Upon the hearing of such application for commitment, evidence may be submitted as to whether the best interest of society and of such feeble-minded person will be served by his or her sexual sterilization; and if the court shall find that such person is feeble-minded and should be committed to the custody of such institution for the feeble-minded, it shall further find whether the welfare of society and of such feeble-minded person will be promoted by his or her sexual sterilization, the finding of the court being either that sexual sterilization is unnecessary or that the best interest of society and of such feeble-minded person will be served by his or her sexual sterilization. And if the court shall find that the best interests of society and of such feeble-minded person will be served by his or her sexual sterilization, the court, as a part of the judgment and decree committing such feeble-minded person to such institution shall authorize the superintendent of the institution to which such feeble-minded person is committed to have performed upon such feeble-minded person the operation of vasectomy, if a male, and of salpingectomy, if a female, or any other more suitable operation or treatment having sure sterilizing results, which authorization shall be set forth in the order of commitment, a copy of which, under seal of the court, shall be forwarded to such superintendent along with other required papers in the case: Provided, however, That such feeble-minded person, by his or her guardian, parent or next friend, may, within thirty [30] days after judgment, appeal, as in other civil proceedings, from the finding and judgment of the court authorizing such operation of sterilization, and the pendency of such appeal shall stay the performance of such operation of sterilization until the appeal be determined: Provided, further, That upon the filing of notice of appeal, the clerk of the court in which such notice is filed shall forthwith forward by mail to the superintendent of such institution written information of the filing of such notice of appeal. [Acts 1931, ch. 50, § 2, p. 116.]

Compiler's Notes. The words "such application" in the section would refer to the application prescribed in § 1 of Acts 1931, ch. 50, as amended by Acts 1937, ch. 132.

Section 1 of Acts 1931, ch. 50, as amended by Acts 1937, ch. 132, relating to physicians' certificate as to necessity of sterilization of person in institution for feeble-minded, was repealed by Acts 1955, ch. 339, § 15, p. 1068, effective January 1, 1956.

There may be some question as to whether the intention of the legislature was to repeal Acts 1937, ch. 132, or Acts 1935, ch. 132. There may also be some question whether the title of Acts 1955, ch. 339 was sufficient for the repeal of section 1 of Acts 1931, ch. 50 and Acts 1937, ch. 132. It read: "An act concerning the maintenance of and

the furnishing of clothing to patients in psychiatric hospitals of the state, providing for the collection of maintenance claims, making an appropriation, and providing for the disposition of the money received from the collection of maintenance payments."

Section 1 of Acts 1931, ch. 50 as amended by section 1 of Acts 1937, ch. 132 prior to its repeal read: "Whenever an application for the commitment of any person to an institution for the feeble-minded shall be filed in any court having competent jurisdiction, it shall be the duty of each of the examining physicians appointed by the court, as now provided by law, if he shall certify to the court that the person for whom such application is made, is, in his opinion, afflicted with idiocy, imbecility, or feeble-mindedness, to further certify

to the court whether, in his opinion, the welfare of society and of such person would be promoted by his or her sexual sterilization."

Title of Act. The title of Acts 1931, ch. 50, reads: "An act providing for the sexual sterilization of feeble-minded per-

sons in certain cases, prescribing the power of courts and defining the duties of medical examiners and the superintendent of institutions for the feeble-minded in relation thereto." In force June 30, 1931.

Collateral References

Unauthorized sexual sterilization. 56
A. L. R. (2d) 695.

16-13-14-2 [22-1609]. Duties of superintendent—Physical condition of patient—Operation.—Whenever any feeble-minded person upon whom the operation of sexual sterilization shall have been authorized, as herein provided, shall have been admitted to an institution for the feeble-minded, the superintendent thereof, at such time as he may deem expedient, and when in his judgment the general health of such feeble-minded person will not be affected thereby, and not less than thirty [30] days after such feeble-minded person has been received at such institution, may have performed upon such feeble-minded person by a competent licensed physician and surgeon the operation of vasectomy, if a male, and salpingectomy, if a female, or any other more suitable operation or treatment having such sterilizing results: Provided, That nothing in this act [16-13-14-1—16-13-14-5] shall be construed to authorize the operation of castration or the removal of sound organs from the body. [Acts 1931, ch. 50, § 3, p. 116.]

16-13-14-3 [22-1610]. Report by superintendent — Contents. — It shall be the duty of the superintendent of such institution for feeble-minded, whenever an operation for the sexual sterilization of a feeble-minded person shall have been performed, under the provisions of this act [16-13-14-1—16-13-14-5], and within ten [10] days thereafter, to make a report thereof to the secretary of the board of state charities, which report shall set forth the name and age of the person upon whom such operation was performed, the county from which such person was committed, the date of such commitment, the date of admission to the institution, the date of such operation and the name and address of the physician and surgeon performing the same. [Acts 1931, ch. 50, § 4, p. 116.]

Compiler's Note. The board of state charities, referred to in this section, was abolished by Acts 1936 (Spec. Sess.), ch. 3, § 11 and its powers and duties transferred to the state department of public welfare. Since Acts 1945, ch. 335 as amended by Acts 1947, ch. 67, § 1 (see 16-13-2-1) authorized the transfer of certain powers relating to mental health from the state department of public welfare to the Indiana council of mental

health, and since Acts 1953, ch. 197 which abolished the Indiana council for mental health transferred its powers to the commissioner of the division of mental health of the department of health, which powers were later transferred to the commissioner of mental health of the department of mental health by 16-13-1-7 it is probable that the reference in this section should be to the "commissioner of mental health."

16-13-14-4 [22-1611]. Liability of persons executing.—Neither the superintendent, the attending physician or surgeon, nor any other person legally participating in the execution of the provisions of this act [16-13-14-1—16-13-14-5] shall be liable either civilly or criminally on account of such participation, but they shall not be exempt from such

action for any illegal or criminal act which may be incidental or collateral thereto. [Acts 1931, ch. 50, § 5, p. 116.]

Collateral References

Unauthorized sexual sterilization. 56
A. L. R. (2d) 695.

16-13-14-5 [22-1612]. Act of 1931 supplemental.—The provisions of this act [16-13-14-1—16-13-14-5] shall not be construed as conflicting with or superseding the provision of the act approved March 11, 1927, entitled "An act to provide for the sexual sterilization of inmates of state institutions in certain cases" [16-13-13-1—16-13-13-6] which act shall remain in full force and effect, but are intended as a separate and additional method of procedure. [Acts 1931, ch. 50, § 6, p. 116.]

CHAPTER 15

STERILIZATION OF PATIENTS [—ACT OF 1935]

SECTION.

16-13-15-1. Report of examining physicians appointed by court.
16-13-15-2. Finding as to need for sterilization—Right of appeal.

SECTION.

16-13-15-3. Duties of superintendent.
16-13-15-4. Report by superintendent.
16-13-15-5. No civil liability.
16-13-15-6. Act of 1935 supplemental.

16-13-15-1 [22-1613]. Report of examining physicians appointed by court.—Whenever an application for the commitment of any person to an institution for the insane shall be filed in any court having competent jurisdiction, it shall be the duty of each of the examining physicians appointed by the court, as now provided by law, if he shall certify to the court that the person for whom such application is made, is, in his opinion, afflicted with insanity, to further certify to the court whether, in his opinion, such person is the probable potential parent of mentally incompetent or socially inadequate offspring likewise afflicted. [Acts 1935, ch. 312, § 1, p. 1502.]

Title of Act. The title of Acts 1935, ch. 312, reads: "An act providing for the sexual sterilization of insane persons in certain cases, prescribing the powers of courts, and defining the duties of medical examiners and superintendents of institutions for the insane in relation thereto." In force June 10, 1935.

Cross-References. Examining physicians, qualifications, 16-14-9-15.

Preliminary mental examinations in counties having cities of the first class, 16-14-12-1—16-14-12-18.

Opinions of Attorney-General. There must be a hearing and judgment by the court before operation of sexual sterilization. 1936, p. 153.

16-13-15-2 [22-1614]. Finding as to need for sterilization—Right of appeal.—Upon the hearing of such application for commitment, evidence may be submitted as to whether the best interest of society and of such insane person will be served by his or her sexual sterilization; and if the court shall find that such person is insane and should be committed to the custody of such institution for the insane, it shall further find whether the welfare of society and of such insane person will be promoted by his or her sexual sterilization, the finding of the court being either that sexual sterilization is unnecessary or that the best interest of society and of such insane person will be served by his

or her sexual sterilization. And if the court shall find that the best interests of society and of such insane person will be served by his or her sexual sterilization, the court, as a part of the judgment and decree committing such insane person to such institution, shall authorize the superintendent of the institution to which such insane person is committed to have performed upon such insane person the operation of vasectomy, if a male, and of salpingectomy, if a female, or any other more suitable operation or treatment having full sterilizing results, which authorization shall be set forth in the order of commitment, a copy of which, under the seal of the court, shall be forwarded to such superintendent along with other required papers in the case. Such insane person, by his or her guardian, parent or next friend, may, within thirty [30] days after judgment, appeal as in other civil proceedings, from the finding and judgment of the court authorizing such operation of sterilization, and the pendency of such appeal shall stay the performance of such operation of sterilization until the appeal be determined. Upon the filing of notice of appeal, the clerk of the court in which such notice is filed shall forthwith forward by mail to the superintendent of such institution, written information of the filing of such notice of appeal. [Acts 1935, ch. 312, § 2, p. 1502.]

16-13-15-3 [22-1615]. Duties of superintendent. — Whenever any insane person upon whom the operation of sexual sterilization shall have been authorized, as herein provided, shall have been admitted to an institution for the insane, the superintendent thereof, at such time as he may deem expedient and when in his judgment the general health of such insane person will not be affected thereby, and not less than thirty [30] days after such insane person has been received at such institution, shall have performed upon such insane person, by a competent and licensed physician and surgeon, the operation of vasectomy, if a male, and salpingectomy, if a female, or any other more suitable operation or treatment having such sterilizing results. [Acts 1935, ch. 312, § 3, p. 1502.]

16-13-15-4 [22-1616]. Report by superintendent.—It shall be the duty of the superintendent of such institution for the insane whenever an operation for the sexual sterilization of an insane person shall have been performed, under the provisions of this act [16-13-15-1—16-13-15-6], and within ten [10] days thereafter, to make a report thereof to the secretary of the department of public welfare, or its successor, which report shall set forth the name and age of the person upon whom such operation was performed, the county from which such person was committed, the date of such commitment, the date of admission to the institution, and the date of such operation. [Acts 1935, ch. 312, § 4, p. 1502.]

Compiler's Note. It is probable that the report required to be made to the department of public welfare by this section should now be made to the commissioner of mental health because of the provision in Acts 1945, ch. 335, § 2 as amended by Acts 1947, ch. 67 (16-13-2-1) authorizing the transfer of certain powers of the state board of public welfare to the Indiana council for mental health. The Indiana council for mental

health was abolished by Acts 1953, ch. 197, § 204 and its powers and duties transferred to the commissioner of the division of mental health of the department of health. The division of mental health of the department of health was abolished and its duties transferred to the commissioner of mental health of the department of mental health by 16-13-1-7.

16-13-15-5 [22-1617]. No civil liability.—Neither the superintendent, nor the attending physician or surgeon, nor any other person legally participating in the execution of the provisions of this act [16-13-15-1—16-13-15-6] shall be liable civilly on account of such participation. [Acts 1935, ch. 312, § 5, p. 1502.]

Collateral References

Unauthorized sexual sterilization. 56
A. L. R. (2d) 695.

16-13-15-6 [22-1618]. Act of 1935 supplemental.—The provisions of this act [16-13-15-1—16-13-15-6] shall not be construed as conflicting with nor superseding the provisions of the act approved March 11, 1927, entitled "An act to provide for the sexual sterilization of inmates of state institutions in certain cases," [16-13-13-1—16-13-13-6] which act shall remain in full force and effect, but are intended as a separate and additional method of procedure. [Acts 1935, ch. 312, § 6, p. 1502.]

CHAPTER 16

STERILIZATION—APPEAL TO COURT

SECTION.

16-13-16-1. Appeal to circuit court.

16-13-16-1 [22-1603a]. Appeal to circuit court.—From any order so entered by the state board of public welfare [commissioner of mental health], the said inmate or his guardian or parent or next friend shall within thirty [30] days after the date of such order have an appeal as of right to the circuit court of the county in which the said institution is situated, which appeal may be taken by giving notice thereof in writing to the said board and to the other parties to the said proceeding, whereupon the secretary of said state board shall forthwith cause a copy of the petition, notice, evidence and orders of the said state board certified by the secretary or in his absence by any member thereof, to the clerk of the said circuit court, who shall file the same and docket the appeal to be heard and determined by the said court as soon thereafter as may be practicable.

The said circuit court in determining such appeal may consider the record of the proceedings before the said state board of public welfare [commissioner of mental health], including the evidence therein appearing, together with such other legal evidence as the said court may consider pertinent and proper that may be offered to the said court by any party to the appeal.

Upon such appeal the said circuit court may affirm, revise or reverse the orders of the said board [commissioner] appealed from and may, enter such order as it deems just and right and which it shall certify to the said board.

The pendency of such appeal shall stay proceedings under the order of the board [commissioner] until the appeal be determined. [Acts 1937, ch. 244, § 3, p. 1164.]

Compiler's Notes. Since §§ 1, 2 of Acts 1937, ch. 244 amended §§ 1, 2 of Acts 1927, ch. 241 (16-13-13-1, 16-13-13-2) the

"order so entered" referred to in this section would refer to the order mentioned in 16-13-13-2.

When originally enacted this section would have superseded 16-13-13-3 but since 16-13-13-3 has now been amended by Acts 1951, ch. 227, § 2 it would seem that this section is now superseded by 16-13-13-3 as amended.

The bracketed words "commissioner of mental health" and "commissioner" were inserted by the compiler. Acts 1945, ch. 335 as amended by Acts 1947, ch. 67, § 1 (16-13-2-1) provided for the transfer of certain powers relating to mental health from the state department of public welfare to the Indiana council for mental health. Acts 1953, ch. 197, § 204 abolished the Indiana council for mental health and transferred its powers to the commissioner of the division of mental health of the department of health. Section 2

of Acts 1961, ch. 58 (16-13-1-2) abolished the division of mental health of the department of health and section 7 of Acts 1961, ch. 58 (16-13-1-7) transferred the powers and duties of the division of mental health of the department of health to the commissioner of mental health of the department of mental health.

Title of Act. The title of Acts 1937, ch. 244, reads: "An act to amend sections 1 and 2 of an act entitled 'An act to provide for the sexual sterilization of inmates of state institutions in certain cases,' approved March 11, 1927, and adding an additional section thereto concerning procedure in such cases." In force June 7, 1937.

Eugenics Legislation: Act of 1974

16-13-6.5-1 HEALTH AND HOSPITALS—MENTAL HEALTH

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passage of the act. The provisions of section 2 of this act shall take effect on July 1, 1975." Approved February 18, 1974.

CHAPTER 6.5—ALCOHOLISM AND INTOXICATION TREATMENT

16-13-6.5-1—16-13-6.5-23 [22-1515—22-1536]. [Repealed.]

Compiler's Note. These sections (IC 16-13-6.5-1—16-13-6.5-23, as added by Acts 1973, P. L. 156, § 1, p. 801), relating to alcoholism and intoxication treatment, were repealed by Acts 1974, P. L. 59, § 5. For present law see 16-13-6.5-1—16-13-6.5-34.

CHAPTER 7.5—INDIANA DRUG ACT

16-13-7.5-1—16-13-7.5-27 [9-3901—9-3927]. [Repealed.]

Compiler's Note. These sections (IC 1971, 16-13-17-1—16-13-17-24 (16-13-7.5-1—16-13-7.5-24, as amended) and 16-13-7.5-25—16-13-7.5-27, as added by Acts 1971, P. L. 222, § 1, p. 882; 1972, P. L. 11, § 7, p. 146; 1973, P. L. 157, §§ 1-11, p. 817), relating to treatment of drug abuse, were repealed by Acts 1974, P. L. 59, § 5. For present law see 16-13-6.5-1—16-13-6.5-34.

CHAPTER 13—STERILIZATION OF PATIENTS [—ACT OF 1927]

16-13-13-1—16-13-13-6 [22-1601—22-1606]. [Repealed.]

Compiler's Note. These sections (Acts 1927, ch. 241, §§ 1-6, p. 713; 1937, ch. 244, §§ 1 and 2, p. 1164; 1951, ch. 227, §§ 1 and 2, p. 649), relating to sterilization of patients of county and state hospitals and institutions, were repealed by Acts 1974, P. L. 60, § 1.

CHAPTER 14—STERILIZATION OF PATIENTS [—ACT OF 1931]

16-13-14-1—16-13-14-5 [22-1608—22-1612]. [Repealed.]

Compiler's Note. These sections (Acts 1931, ch. 50, §§ 2-6, p. 116), relating to sterilization of feeble-minded persons, were repealed by Acts 1974, P. L. 60, § 1.

CHAPTER 15—STERILIZATION OF PATIENTS [—ACT OF 1935]

16-13-15-1—16-13-15-6 [22-1613—22-1618]. [Repealed.]

Compiler's Note. These sections (Acts 1935, ch. 312, §§ 1-6, p. 1502), relating to sterilization of insane persons, were repealed by Acts 1974, P. L. 60, § 1.

CHAPTER 16—STERILIZATION—APPEAL TO COURT

16-13-16-1 [22-1603a]. [Repealed.]

Compiler's Note. This section (Acts 1937, ch. 244, § 3, p. 1164), relating to appeal from order of sterilization, was repealed by Acts 1974, P. L. 60, § 1.

ARTICLE 14—STATE PSYCHIATRIC HOSPITALS

CHAPTER 9—ADMISSION PROCEDURES

16-14-9-1 [22-1201]. Definitions.

Valparaiso University Law Review. Remedies for Individuals Wrongly Detained in State Mental Institutions Because of Their Incompetency to Stand Trial: Implementing Jackson v. Indiana, 7 Val. U. L. Rev. 203.

16-14-9-12 [22-1212]. Citizen's sworn statement of mental illness, etc.

Opinions of Attorney-General. Any physician in a civil commitment proceeding acts in his professional capacity and